



SOLID WASTE MANAGEMENT BOARD

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GOVERNOR

Gaston Caperton

COMMISSIONER

David C. Callaghan

DIRECTOR

Charles F. Jordan

The following rule is filed for technical cleanup purposes:

TITLE 54

LEGISLATIVE RULES

SOLID WASTE MANAGEMENT BOARD

SERIES 4

THE DEVELOPMENT OF

COMMERCIAL SOLID WASTE FACILITY SITING PLANS

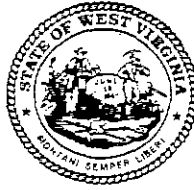
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**OFFICE OF WEST VIRGINIA
SECRETARY OF STATE**



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SOLID WASTE MANAGEMENT BOARD**54 CSR 4**

- A. The Development of Commercial Solid Waste Facility Siting Plans - 54 CSR 4
1. On page 1, Subsection 1.1., by striking "§ 20-9-12a" and inserting in lieu thereof "§ 22C-4-24"
 2. On page 1, Subsection 1.4., by striking "§ 16-26-6" and inserting in lieu thereof "§ 22C-3-6"
 3. On page 1, Subsection 1.4, by striking "§ 20-9-12a" and inserting in lieu thereof "§ 22C-4-24"
 4. On page 1, Subsection 2.1., by striking "§ 20-5F-1 et seq." and inserting in lieu thereof "§§ 22-15-1--22-15-20"
 5. On page 1, Subsection 2.2., by striking "§ 20-9-3" and inserting in lieu thereof "§ 22C-4-3"
 6. On page 1, Subsection 2.2., by striking "§ 20-9-4" and inserting in lieu thereof "§ 22C-4-4"
 7. On page 2, Subsection 2.2., by striking "§ 20-9-5a" and inserting in lieu thereof "§ 22C-4-6"
 8. On page 2, Subsection 2.3., by striking "§ 16-26-4" and inserting in lieu thereof "§ 22C-3-4"
 9. On page 2, Subsection 2.4., by striking "§ 20-9" and inserting in lieu thereof "§ 22C-4"
 10. On page 3, Subsection 2.17., by striking "§ 20-9-12a" and inserting in lieu thereof "§ 22C-4-24"
 11. On page 4, Subsection 2.21., by striking "§ 20-5A" and inserting in lieu thereof "§ 22-11"
 12. On page 4, Subsection 2.21., by striking "§ 20-SE" and inserting in lieu thereof "§ 22-18"
 13. On page 4, Subsection 2.21., by striking "Chapter 22B" and inserting in lieu thereof "Chapter 22C"
 14. On page 6, Subsection 5.1.2., by striking "§ 20-9-7" and inserting in lieu thereof "§ 22C-4-8"



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**TITLE 54
LEGISLATIVE RULES
SOLID WASTE MANAGEMENT BOARD**

**SERIES 4
THE DEVELOPMENT OF
COMMERCIAL SOLID WASTE FACILITY SITING PLANS**

§ 54-4-1. General.

1.1. Scope. -- The purpose of these regulations is to establish minimum standards and requirements for the content, format, amendment, review, approval and public participation process involved in county and regional solid waste facility siting plans as required by W.Va. Code ~~§ 20-9-12a~~ § 22C-4-24. Such minimum standards and requirements are designed to protect the public health, safety and environment throughout the State of West Virginia and to ensure the fair and equitable evaluation of all sites proposed for use as solid waste facilities.

1.2. Filing Date. --

1.3. Effective Date. --

1.4. Authority. -- W.Va. Code ~~§ 16-26-6~~ § 22C-3-6; and W.Va. Code ~~§ 20-9-12a~~ § 22C-4-24.

§ 54-4-2. Definitions.

The following words and terms, when used in these regulations, shall have the following meaning, unless the context clearly indicates otherwise:

2.1. "Approved Solid Waste Facility" - means a commercial solid waste facility or practice which has a valid permit or compliance order under W. Va. Code ~~§ 20-5F-1 et seq.~~ §§ 22-15-1--22-15-20.

2.2. "Authority" - means any solid waste authority of any county or region in West Virginia, established by W. Va. Code ~~§ 20-9-3~~ § 22C-4-3 and W. Va. Code ~~§ 20-9-4~~

§ 22C-4-4; or the County Commission of any county which elected not to establish an authority, as allowed by W. Va. Code ~~§ 20-9-5a~~ § 22C-4-6.

2.3. "Board" - means the West Virginia Solid Waste Management Board as established by W. Va. Code ~~§ 16-26-4~~ § 22C-3-4, or its authorized representatives.

2.4. "Class A Solid Waste Facility" - means a commercial solid waste disposal facility which is authorized to handle an aggregate of ten thousand tons (10,000) or more of solid waste per month at one or more commercial solid waste disposal facilities in the county (or region if said county participates in a regional solid waste authority pursuant to W. Va. Code ~~§ 20-9~~ § 22C-4) in which the solid waste disposal facility is to be located.

2.5. "Class B Solid Waste Facility" - means a commercial solid waste facility which receives, or is expected to receive, an average daily quantity of mixed solid waste equal to or exceeding one hundred (100) tons each working day; or serves, or is expected to serve, a population equal to or exceeding forty thousand (40,000) persons, but which does not receive nor is expected to receive solid waste exceeding an aggregate of ten thousand (10,000) tons per month. Class B facilities do not include construction/demolition facilities.

2.6. "Class C Solid Waste Facility" - means a commercial solid waste facility which receives, or is expected to receive, an average daily quantity of mixed solid waste of less than one hundred (100) tons each working day; and serves, or is expected to serve, a population of less than forty thousand persons. Class C solid waste disposal facilities do not include construction/demolition facilities.

2.7. "Class D Solid Waste Facility" - means any commercial solid waste facility for the disposal of only construction/demolition waste.

2.8. "Commercial Solid Waste Facility" - means any solid waste facility which accepts solid waste generated by sources other than the owner or operator of the facility and shall not include an approved solid waste facility owned and operated by a person for the sole purpose of disposing of solid wastes created by that person or such person and another person on a cost-sharing or nonprofit basis and shall not include the legitimate beneficial use of coal combustion by-products or the reuse or recycling of materials for structural fill, road base, mine reclamation and similar applications.

2.9. "Composting Facility" - means a facility at which organic solid waste is biologically decomposed under controlled anaerobic or aerobic conditions to yield a humus-like product.

2.10. "Construction/Demolition Waste" - means waste building materials, grubbing waste, and rubble resulting from construction, remodeling, repair, and demolition operations on houses, commercial buildings, and other structures and pavements, including, but not limited to: wood, plaster, metals, asphaltic substances, bricks, blocks and concrete, other masonry materials, trees, brush, stumps, and other vegetative materials but shall not include asbestos waste.

2.11. "Endangered or Threatened Species" means any species of plant or animal that is listed by the federal government as endangered or threatened in 50 CFR Part 17.

2.12. "Energy Recovery Facility" - means any resource recovery facility at which solid wastes are incinerated, or processed for future incineration, with the intention of using the resulting energy for generation of steam, electricity, or any other use not specified in these regulations.

2.13. "Incinerator" - means any device used to accomplish incineration, including incinerators associated with resource recovery.

2.14. "Karst Region" - means a type of topography which is formed over limestone or dolomite by dissolution of the formation and is characterized by sinkholes, caves and similar features.

2.15. "Landfill" - means a facility or part of one at which solid waste, or its residue after treatment, is intentionally placed in or on land, and at which solid waste will remain after closure. The term landfill does not include a land application unit, surface impoundment, solid waste disposal surface impoundment or injection well.

2.16. "Materials Recovery Facility" - means any resource recovery facility at which solid wastes are manually or mechanically shredded, separated, and recovered from the general waste stream for the purpose of recycling or reusing the resource recovered.

2.17. "Plan" or "Siting Plan" - means the commercial solid waste facility siting plan required under W. Va. Code ~~§ 20-9-12a~~ § 22C-4-24.

2.18. "Recycle" or "Recycling" - means the collection, separation, recovery and sale, or reuse of metals, glass, paper and other materials.

2.19. "Recycling Facility" - means any solid waste facility for the purpose of recycling at which neither land disposal, nor biological, chemical, or thermal transformation of solid waste occurs. The manual or mechanical separation of recyclables from the general waste stream may not occur; however, the sorting of recyclables into separate categories may occur at a recycling facility.

2.20. "Resource Recovery Facility" - means any solid waste facility at which solid wastes are mechanically, biologically, chemically, or thermally transformed for the purpose of separating, removing, or creating any materials or energy for reuse or sale and at which land disposal of solid waste does not occur. Resource recovery facilities include composting facilities, environmentally acceptable incinerators, materials recovery facilities, energy recovery facilities and other such solid waste facilities not herein specified.

2.21. "Solid Waste" - means any garbage, paper, litter, refuse, cans, bottles, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, other discarded material, including carcasses of any dead animal or any other

offensive or unsightly matter, solid, liquid, semisolid or contained liquid, or gaseous material resulting from industrial, commercial, mining or community activities but does not include solid or dissolved material in sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources and have permits under W. Va. Code ~~§ 20-5A~~ § 22-11, or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, or a hazardous waste either identified or listed under W. Va. Code ~~§ 20-SE~~ § 22-18, or refuse, slurry, overburden or other wastes or material resulting from coal-fired electric power generation, the exploration, development, production, storage and recovery of coal, oil and gas, and other mineral resources placed or disposed of at a facility which is regulated under W. Va. Code Chapter 22, Chapter 22A, or ~~Chapter 22B~~ Chapter 22C, so long as such placement or disposal is in conformance with a permit issued pursuant to such chapters; "solid waste" shall not include materials which are recycled by being used or reused in an industrial process to make a product, as effective substitute for commercial products, or are returned to the original process as a substitute for raw material feedstock.

2.22. "Solid Waste Disposal" - means the practice of disposing of solid waste including placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any solid waste.

2.23. "Solid Waste Facility" - means any system, facility, land, contiguous land, improvements on the land, structures, or other appurtenances or methods used for processing, recycling, or disposing of solid waste including landfills, transfer stations, environmentally acceptable incinerators, resource recovery facilities, recycling facilities, materials recovery facilities, energy recovery facilities and other such facilities not herein specified.

2.24. "Transfer Stations" - means a combination of structures, machinery or devices at a place or facility where solid waste is taken from collection vehicles and placed in other transportation units for movement to another solid waste management facility.

2.25. "Wetlands" - means those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that, under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

2.26. "100-Year Flood" - means a flood of a magnitude equalled or exceeded once in one hundred (100) years.

§ 54-4-3. Procedure for Plan Development and Approval.

3.1. Submission to the Board.

No later than March 31, 1991, each authority shall submit to the Board one copy of a draft plan.

3.2. Administrative Completeness Review.

3.2.1. If the Board finds the draft plan to be incomplete, i.e., to not contain all of the information required by these regulations, it shall return the plan to the authority along with a written statement explaining how the plan is incomplete.

3.2.2. The authority shall have thirty (30) days to amend the plan by providing the remaining required information and to submit the amended plan to the Board. No plan will be reviewed for technical merit until it is administratively complete.

3.3. Technical Review.

3.3.1. When a plan is determined to be administratively complete it will be subjected to a technical review of its contents, procedures, and processes.

3.3.2. The Board shall approve the final plan in writing if the Board determines that the plan complies with the purposes and requirements of applicable state and applicable federal law, if any, and the regulations promulgated in this series.

3.3.3. If the Board determines that the plan should be rejected, it shall return the plan to the authority with a written statement of the insufficiencies in the plan.

3.3.4. Within ninety (90) days of receipt of a letter disapproving the plan, or by July 1, 1991, whichever is later, the authority shall revise the plan to eliminate the insufficiencies and submit the amended plan to the Board.

3.4. Final Submission to the Board.

No later than July 1, 1991, or a later date if allowed under subsection 3.3.4. of these regulations, each county authority shall submit to the Board three (3) copies of its final plan. Each regional authority must submit one additional copy of the plan for each county within that region. An extension of no more than one year may be granted by the Board, upon written request of an authority. Any such request must be received by the Board by July 1, 1991, and shall include the length of the extension requested and the justification for the extension.

3.5. Plans Developed by the Board.

The Board shall develop a plan for any authority which fails to submit a plan on or before July 1, 1991, or such other extended date if one has been established by the Board pursuant to Section 3.4. of these regulations.

§ 54-4-4. Required Format of Commercial Siting Plan.

4.1. Required Format.

In addition to the information required in Section 5 of these regulations, each plan submitted shall include: (1) a cover sheet which includes the name of the authority, the name of the plan, and the signature of the chairman of the authority; (2) a forward or preface which includes the purpose of the plan; (3) a table of contents indicating the major subdivisions of the plan; (4) a brief summary of the plan and its procedures, its methodology and its conclusions; (5) the solid waste facility zones; (6) the rationale for establishing these zones; (7) the published announcement of all public hearings; (8) a brief summary of public comments and a statement describing how the authority responded to the public comments; and (9) appropriate highway and topographical maps.

§ 54-4-5. Required Content of Commercial Siting Plan.

5.1. General Information. The plan shall include the following general information:

5.1.1. A description of the purposes and objectives of the plan as developed by the authority for a period of twenty (20) years.

5.1.2. The provisions of the comprehensive litter and solid waste control plan, as submitted to the Board pursuant to W. Va. Code ~~§ 20-9-7~~ § 22C-4-8, regarding collection and disposal of solid waste and the requirements, if any, for additional commercial solid waste landfill and transfer station capacity.

5.2. Solid Waste Facility Zones.

5.2.1. Each plan shall contain a narrative description and appropriate topographical maps which delineate the zones in which:

5.2.1.a. Class A landfills (over 10,000 tons per month),

5.2.1.b. Class B and C landfills (under 10,000 tons per month),

5.2.1.c. Class D landfills (construction/demolition only),

5.2.1.d. Solid waste transfer stations,

5.2.1.e. Recycling facilities,

5.2.1.f. Energy recovery facilities and environmentally acceptable incinerators,

5.2.1.g. Materials recovery facilities, and

5.2.1.h. Composting facilities are "authorized", "tentatively prohibited" or "prohibited". Unless the readily available information clearly establishes that an area is suitable for the location of a commercial solid waste facility, or not suitable for such a facility, the area shall be designated as an area in which the location of a commercial solid waste facility is tentatively prohibited.

5.2.2. Each type of facility listed in Subsection 5.2.1. shall be addressed separately in the narrative along with the rationale for establishing the zone in accordance with Section 5.3. of these regulations. The separate zones may be displayed on a single topographical map or a series of topographical maps as desired by the authority. All existing facilities listed in Subsection 5.2.1. will be listed in the plan and depicted on the map regardless of location in or out of an authorized zone. When a facility is located in more than one county, each affected county shall depict the facility on the map.

5.3. Rationale for Establishing Siting Zones.

The rationale for establishing these zones shall be included in the narrative. This rationale shall consider the following criteria:

5.3.1. The efficient disposal of solid waste, including all solid waste generated within the county or region -- Describe how the zones established by the plan will ensure the efficient collection, transfer and disposal of solid waste.

5.3.2. Economic development -- Describe how the zones established by this plan will have a positive or negative impact on the county or regional economy. Detail the specific impact and give reasoning behind the impact.

5.3.3. Transportation facilities -- Describe how the transportation network will allow or prohibit the efficient transportation of solid waste into or through the established zones. Address all transportation facilities, i.e., roads, river, and rail.

5.3.4. Property values -- Describe how the zones established will have a positive or negative impact on property values.

5.3.5. Groundwater and surface water -- Describe how the established zones will protect groundwater and surface waters in the area.

5.3.5.a. An authority shall establish a zone in which solid waste facilities are prohibited where the readily available information clearly establishes that the facilities will cause:

5.3.5.a.1. A significant adverse impact upon wetlands;

5.3.5.a.2. A significant adverse impact upon any surface water;

5.3.5.a.3. A significant adverse impact upon groundwater quality; or

5.3.5.a.4. A violation of surface water quality standards found in 46 C.S.R. 1.

5.3.5.b. An authority shall establish a zone in which landfills are prohibited in the following areas, unless the readily available information clearly establishes that landfills may be located within the zone and not cause a significant adverse impact upon ground or surface water quality:

5.3.5.b.1. Within three hundred (300) feet of any surface water (facility drainage or sedimentation control structures are exempt from this distance calculation);

5.3.5.b.2. Within three hundred (300) feet of any wetlands (facility drainage or sedimentation control structures are exempt from this distance calculation);

5.3.5.b.3. Within a perennial stream;

5.3.5.b.4. Within a 100-year floodplain; and

5.3.5.b.5. Within twelve hundred (1,200) feet of any public or private water supply well in existence at the time the zone is established.

5.3.6. Geologic and hydrological conditions -- Describe what geological and hydrological conditions prohibit or enable a zone to be suitable for siting a solid waste facility. Some of the factors which the authority shall consider are the existence of any known faults within two hundred (200) feet of the area or other extreme hydrological or geological conditions, e.g., karst regions, solution cavities, extensive sandstone aquifers, shales, consolidated formations, aquitards and the existence of any mining in the area. If the readily available information clearly establishes that any such conditions will cause a significant adverse impact on ground or surface water quality, the authority shall designate the area as prohibited for landfills.

5.3.6.a. For the purposes of this subsection, the term "mining" means the extraction of non-replenishable materials from the earth's crust, e.g., oil, gas, coal, minerals, sand, gravel, limestone, and other substances of a similar nature.

5.3.6.b. For the purposes of this subsection, the term "known fault" means faults that have had displacement in Holocene time (i.e., during the last eleven thousand (11,000) years).

5.3.7. Aesthetic and environmental quality -- Describe the positive or negative impacts the established zones will have on existing aesthetic and environmental conditions. For example siting a recycling center at a former open dump might enable the reclamation of an unsanitary dump. Factors to be considered are the presence of public parks and recreation areas, state and national forests, and endangered or threatened species. An authority shall establish a zone in which landfills are prohibited in the following areas:

5.3.7.a. Within one thousand (1000) feet of the nearest edge of the right-of-way of any state truck highway, interstate or federal aid primary highway, or the boundary of any public park unless the facility is screened by natural objects, plantings, fences, or other appropriate means so that it is not readily visible from the highway or park; and

5.3.7.b. Within ten thousand (10,000) feet of any airport runway used or planned to be used by turbojet aircraft or within five thousand (5,000) feet of any airport runway used only by piston type aircraft or within other areas where a substantial bird hazard to aircraft would be created.

5.3.8. Historic and cultural resources -- Describe any effect the zones will have on specific historic and cultural sites. A description of each historic or cultural site, including the size and location, should be listed in the plan.

5.3.9. The present or potential land uses for residential, commercial, recreational, environmental conservation, or industrial purposes -- Provide the present land uses for the different zones and realistic potential land uses for the zones. Describe how siting a facility in a particular zone will affect the existing and potential land uses. Zones in which landfills are authorized shall not be established within five hundred (500) feet of a dwelling, occupied at the time a zone is established, unless written permission is obtained from the owner of the dwelling.

5.3.10. The public health, welfare and convenience -- Describe how the established zones will protect the public health, welfare and convenience and still allow for the proper collection, transportation and disposal of solid waste.

5.4. An authority may base its decision to prohibit solid waste facilities in a particular zone upon one or more of the criteria listed in Section 5.3. of these regulations. However, a decision to authorize solid waste facilities in a particular zone shall be made only after consideration of all of the criteria listed in Section 5.3.

5.5. The zones shall be established based upon readily available information.

5.5.1. "Readily available information" means relevant information which currently exists and can be obtained by the authority upon request of the appropriate agency or other entity.

5.5.2. Examples of potential readily available information or sources of such information include, but are not limited to:

5.5.2.a. County highway maps.

5.5.2.b. United States Geological Survey maps.

5.5.2.c. West Virginia Geological and Economical Survey.

5.5.2.d. West Virginia Department of Energy.

5.5.2.e. County and regional planning commissions.

5.5.2.f. Governor's Office of Community and Industrial Development.

5.5.2.g. Local libraries.

5.5.2.h. West Virginia Department of Culture and History.

5.5.2.i. Local chambers of commerce.

5.5.2.j. County tax assessor's office.

5.5.2.k. Existing solid waste facilities to the extent such information is relevant.

5.5.2.1. Local solid waste haulers in the area.

5.6. An authority shall "authorize" or "prohibit" solid waste facilities in a given zone only when the readily available information clearly establishes that the facility should be authorized or prohibited in that zone. Otherwise, the authority shall "tentatively prohibit" facilities in the zone.

5.7. The establishment of zones pursuant to these regulations shall be consistent with the comprehensive plan prepared by the county planning commission if such plan exists.

§ 54-4-6. Review and Amendment Process.

6.1. Each authority shall review the plan for its county or region every five years. A public hearing on any amendments must be held in the same manner as outlined in Section 7 of these regulations. Any changes or amendments necessary shall be submitted to the Board for approval.

6.2. At the time of the five year review, the authority shall, in addition to any other amendments considered necessary, extend the period of time covered by the plan to include the next twenty (20) years following the five year review date.

6.3. The plan may be amended at any time by the county or regional authority which originated the plan. Amendments must meet all requirements of the original plan, including that of holding a public hearing as detailed in Section 7 of these regulations. No amendments may become effective until approved by the Board in the same manner as the original plan.

6.4. Upon application from any person or group the authority may amend the siting plan be redesignating a zone, or any portion of a zone.

6.4.1. In such case, the person seeking the change has the burden to affirmatively and clearly demonstrate, based on all of the criteria set forth in Section 5.3. of these regulations, that the requested redesignation is appropriate and proper and that any solid waste facility sited could be appropriately operated in the public interest at such location.

6.4.2. In order to make such demonstration, the person seeking the change shall make whatever examination is necessary and submit specific detailed information to the authority relating to the criteria in Section 5.3. of these regulations.

§ 54-4-7. Public Participation Process.

7.1. Public Notice and Hearing.

7.1.1. After submission of the draft plan to the Board, the authority shall publish notice and conduct at least one public hearing in each county affected to solicit ideas, opinions and comments from the general public concerning the plan.

7.1.2. The authority shall publish notice of the hearing at least thirty (30) days in advance of the hearing as a Class I legal advertisement published in a qualified newspaper, as defined in W. Va. Code § 59-3-1, serving the county or counties, whichever is appropriate, and by posting the public notice at the appropriate county courthouse or courthouses.

7.1.3. A copy of the public notice of the hearing shall be mailed to those persons requesting to be placed on a mailing list to be maintained by the authority.

7.1.4. The public notice shall include the date, time, and place scheduled for the public hearing, an invitation for written and oral comments, an address to which comments may be mailed, and the locations in the area where a copy of the draft plan is available for public review.

7.1.5. The proceedings of the public hearing shall be recorded by mechanical means, and such recording and a copy of all written comments received shall be retained by the authority for a period of three (3) years from the date of the public hearing.

7.1.6. At the public hearing, reasonable limits may be set upon the time allowed for oral statements. The submission of written comments shall be extended to ten (10) days after the public hearing date.

7.2. Public Review of the Plan.

At least thirty (30) days prior to any public hearing on the plan, the authority shall place a copy of the draft plan at the county clerks office or offices and at all public libraries and branch libraries in the county, or counties, for public review.

7.3. Consideration of Public Comments.

7.3.1. The authority shall consider all public comments received, written and oral, in the development of the final plan.

7.3.2. The authority shall prepare a written summary of the public comments received and a statement explaining how it responded to the public comments in the development of the final plan. Such written summary and statement shall be submitted to the Board with the final plan.

7.3.3. If requested by the Board, the authority shall submit all or any part of the public comment record to the Board for its review.